IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

FIRST APPEAL NO.624 OF 2007

Smt.Swarankanta S. Makad Appellant
vs.
Brihan Mumbai Mahanagar Palika Respondents

Mr.G.M.Mistry with Smt.Mamata Shah for the appellant.

Mr.J.J.Xavier for the B.M.C.-respondent.

CORAM : ANOOP V. MOHTA,J.

DATED : 16th July, 2007

P.C.

In a Suit filed by the appellant before the Small Causes Court at Bombay by invoking the provisions of the Mumbai Municipal Corporation Act, 1888 (MMC Act, 1888) challenged the fixing of the rateable value of their property. At the relevant time, admittedly, there was no compliance of Section 217(5) of the MMC Act, 1888.

2. The Court, therefore, by the impugned order dated 9/10th January;, 2007 has dismissed the appeal by observing as under:

"28. From all these circumstances and facts it clearly shows that the appellant has not complied the provisions of Section 217 (5) of M.M.C. Act 1888. In the case in hand the evidence of both the parties is already closed. Arguments are already heard. Considering the mandatory

provisions laid down in aforesaid provisions of law, it is a mandatory duty caste upon the Chief Judge if party failed to pay the property taxes as laid down in aforesaid provisions of law, this court have no alternative but to dismiss the appeal summarily."

3. In view of this, the appeal has been dismissed and the Court has directed the appellant to pay the outstanding property tax amounting to Rs.15,55,659/- along with interest at 6.25% p.a. Liberty has been granted also to the respondent-corporation to recover the aforesaid amount.

4. Against that the appellant has preferred the present first appeal.

5. The learned counsel for the appellant makes submission that in view of the impugned order, the appellant has deposited the amount of Rs.16,90,929/- towards the property tax and interest. The learned counsel for the Corporation is not disputing this fact and in fact pointed out the acknowledgement dated 7.6.2007.

6. In view of this, as the appellant has deposited the requisite amount as contemplated under Section 217 of the MMC Act, there is no reason now that the Court

should not dispose of the appeal on merits. Therefore, the impugned order dated 9th/10th January, 2007 is quashed and set aside. The matter is remanded back to the learned Additional Chief Judge of the Small Causes Court, Bombay and with a request to dispose of the appeal by giving opportunity to the parties preferably within six months.

7. First appeal is disposed of in the above terms.

[ANOOP V. MOHTA,J.]